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OFFICE OF PETITIONS

In re Application of :
Hirohiko Itoh :
Application No. 09/322,177 : ON PETITION
Filed: 28 May, 1999 :
Atty Docket No. 35.G1549-CI :

This is a decision on the renewed petition under 37 CFR 1.182, filed on 26 August, 2005, requesting entry of an amendment to the specification to insert a reference to an earlier-filed application pursuant to the provisions of 35 U.S.C. § 120.

The petition is **GRANTED**.

The record discloses that a request for a Continued Prosecution Application (CPA) was filed on 4 October, 2002. Pursuant to the provisions of 37 CFR 1.53(d)(1)(v), a request for a CPA is a request to expressly abandon the prior application as of the filing date of the request. A request for a CPA is the specific reference required by 35 U.S.C. § 120 to every application assigned the application number; however, the prior application failed to make a specific reference to an earlier-filed application, namely Application No. 08/528,423, filed on 14 September, 1995, prior to the abandonment thereof. Petitioner now requests that the prior abandoned application be amended by inserting a reference to the earlier-filed application. On 16 June, 2004, the issue fee in the present application was paid. On 22 June, 2004, petitioner filed an amendment to include a reference to the prior-filed application in the first line of the specification following the title of the invention.

35 U.S.C. § 120 permits entry of a subsequent amendment to an abandoned application in applications filed prior to 29 November,


2000, to include the benefit of an earlier filing date for purposes other than prosecution.¹

Upon reconsideration, based on the circumstances of this case, the request will be granted.

In view thereof, the request for entry of an amendment to insert a reference to the above-noted earlier-filed applications is granted.

The application is being referred to Technology Center Art Unit 2624 for entry of the amendment.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.


Douglas I. Wood
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¹ See Sampson v. Commissioner of Patents and Trademarks 195 USPQ 136 (D.C.D.C. 1976).